IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W. P. No. 6954 of 2005
Date of decision December 20, 2007

Harnek Singh s/o late Kaka Singh. R/o village and post office, Barnala Distt. Sangrur

..... Petitioner

Versus

1. **State of Punjab through Principal Secretary to Government of Punjab, Department of PWD B&R, Punjab Civil Secretariat, Chandigarh.**
2. **The Chief Engineer, PWD, B&R, Patiala.**
3. **The Executive Engineer, PWD, B&R, Malerkotla (Sangrur).**

..... Respondent-landlord

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. K.L. Arora, Advocate
for the petitioner.

Mr. S.S. Sahu,AAG, Punjab
for the respondents.

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Sham Sunder, J.

The petitioner joined as Beldar, on 3.8.1978, on work charge basis, in the office of respondent No.3. He remained in service from 3.8.1978 to 31.10.1988. The case of the petitioner was sent to the higher authorities, for regularization of his services, on completion of 5 years of service w.e.f. 1.4.1984. An office order was issued on 18.9.1996 (Annexure P-2) vide which the services of the petitioner, were regularized from 1.9.1992 whereas, he retired from service on 31.10.1988, and was no more in service on 1.9.1992. The petitioner then continuously represented the respondents that he retired from service on 31.10.1988, and, as such, his services could not be regularized w.e.f. 1.9.1992, when he was no more in service. The respondents admitted that the petitioner was entitled to regularization, in service w.e.f. 1.4.1984, but due to mistake, he had been

regularized w.e.f. 1.9.1992. However, they did not regularize the services of the petitioner w.e.f. 1.4.1984. Consequently, they also did not pay him the retiral benefits which had become due and payable to him in November,1988. Left with no alternative, the petitioner filed CWP NO. 14053 of 2002 titled as **Harnek Singh Vs. State of Punjab and others.** The writ petition, was ultimately, decided in favour of the petitioner by a Division Bench of this Court on 17.5.2004. The operative portion of the order reads as under:-

> "*In the light of the above facts, we direct the respondents to reconsider the case of the petitioner for regularization of his services with effect from 1984, and for the payment of retiral benefits within a period of six months, from the date, a certified copy of this order is supplied to them.*
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> *The writ petition is accordingly disposed of. Dasti order."*

2. On receipt of the order of the High Court, the respondents regularized the services of the petitioner w.e.f. 1.4.1984, and issued the pension payment order on 6.1.2005. He was also paid the amount of gratuity of Rs.4350/-. It was further stated that the petitioner had retired from service on 31.10.1988, and was due to get pension, and other retiral benefits such as gratuity etc. from November,1988. He was, however, paid the amount of Death-cum-Retirement-Gratuity, and other pensionary benefits, after a period of about 16 years, in January/February, 2005. It was further stated that this amount was utilized by the respondents, for a period of about 16 years, improperly and illegally. Accordingly, the instant Petition, was filed by the petitioner, for issuance of a Writ of Mandamus, directing the respondents, to grant interest at the rate of 18% per annum, on the retiral benefits, from the date the same became due i.e. November,1988.

3. The respondents, in their written statement, admitted that the petitioner was appointed as Beldar, on work charge basis. It was also admitted that the petitioner retired from service on 31.10.1988. It was further admitted that the petitioner filed writ petition No. 14053 of 2002 and, on receipt of a copy of the order passed therein, the respondents regularized the services of the petitioner w.e.f. 1.4.1984, vide order dated 18.10.2004 and he was also paid the pensionary benefits, within a period of six months, stipulated in the Order. After regularization of the services, his case was sent for grant of pension, to the Accountant General, Punjab vide letter dated 16.11.2004. The Office of the Accountant General, Punjab, sanctioned the pension to the petitioner vide letter dated 3.1.2005. It was further stated that since the order of this Court, passed in the writ petition, referred to above, was complied with, by the respondents, within the prescribed period, the petitioner was not entitled to any interest.

4. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. Admittedly, the petitioner joined as Beldar on 3.8.1978 on work charge basis in the Office of respondent No. 3 and retired from service on 31.10.1988. No doubt, the respondents failed to regularize his services w.e.f. 1.4.1984, and, consequently, he was not paid the retiral benefits. However, it is evident that the Chief Engineer, B&R regularized the services of the petitioner w.e.f. 1.9.1992, vide letter dated 28.8.1996, though, he had already retired from service w.e.f. 31.10.1988. This mistake was pointed out by the Superintending Engineer, Public Works Department, B&R Branch, Sangrur, to the Chief Engineer, Public Works Department, B&R Branch, Patiala, vide letter Annexure P-3. Vide letter Annexure P-4,

the Superintending Engineer, Public Works Department, B&R Branch, Sangrur, also wrote to the Chief Engineer, Public Works Department, B&R Branch, Patiala, that the services of the petitioner be regularized w.e.f. 1.4.1984. Whatever, the case may be, the petitioner filed CWP No. 14053 of 2002 titled as **Harnek Singh Vs. State of Punjab and others,** wherein he claimed the relief of regularization of his services w.e.f. 1.4.1984, instead on 1.9.1992; payment of arrears of pensionary benefits becoming due, and payable with interest at the rate of 24% per annum. That writ petition was finally decided on 17.5.2004, with certain directions. The operative portion of the order, passed in that Writ Petition, has already been extracted hereinbefore. It is evident from the order dated 17.5.2004, passed by a Division Bench of this Court, that a direction was issued to the respondents, to re-consider the case of the petitioner, for regularization of his services, w.e.f. 1984, and the payment of retiral benefits, within a period of six months, from the date of receipt of certified copy of the order. No relief, with regard to the grant of interest, claimed by the petitioner, in that writ petition, at the rate of 24% per annum, was granted. The relief, though, claimed, if not specifically granted, is deemed to have been refused. Since, the relief of payment of interest, was deemingly refused to the petitioner, in the earlier Writ Petition, vide order dated 17.5.2004, he could not, in my considered opinion, claim the same relief, by filing the instant writ petition. The instant writ petition, in my opinion, with regard to the relief of interest, claimed by the petitioner, is barred by the principle of res judicata. The principle of res judicata not only bars the Court from adjudicating the matter afresh, which was directly and substantially, in issue, in the earlier proceedings, and was finally heard and decided, on merits, by the

competent Court of law, but also bars the holding of further investigation, into such an issue. Since, the instant Writ Petition, is barred by the principle of res judicata, the petitioner cannot be granted the relief claimed by him.

6. The Counsel for the petitioner, however, contended that vide order dated 17.5.2004, passed by a Division Bench of this Court, in Writ Petition No. 14053 of 2002, the respondents were only directed to re-consider the claim of the petitioner, for the regularization of his services w.e.f. 1.4.1984, and for the payment of retiral benefits, within a period of six months. He further submitted that vide this order, the actual relief of regularization and release of pensionary benefits, had not been granted. The submission of the learned Counsel for the petitioner, does not appear to be correct. The order dated 17.5.2004, passed by a Division Bench of this Court, in Writ Petition No. 14053 of 2002 is clear. Since, the cause of action had already arisen to the petitioner, as he had already retired on 31.10.1988, he claimed the retiral benefits and interest thereon at the rate of 24% per annum. It, therefore, could not be said that till he was paid the retiral benefits, he could not claim interest. Since he claimed the retiral benefits, along with interest at the rate of 24% per annum, and the latter part of the relief was not specifically granted to him, now it does not lie in his mouth to say that no cause of action had arisen to him, in the earlier writ petition, with regard to that relief. The submission of the learned Counsel for the petitioner, being without merit, must fail, and the same stands rejected.

7. Learned Counsel for the petitioner, has placed reliance on **Vijay L Mehrotra Vs. State of U.P. and others** JT 2000(5) SC 171, **R.S.Randhawa Vs. State of Punjab and others** 1997 (3) RSJ 318,

Harbans Singh Virdi Versus State of Punjab 1997 (4) SCT 30 and **Maha Singh Sinhmar Vs. State of Haryana** 1994 (4) SCT 409 to contend that the petitioner was entitled to interest on delayed payment of retiral benefits. In **R.S.Randhawa's case** (supra), it was held that the writ petition was maintainable for claiming interest, on delayed payment of pension and other retiral benefits, which a retired Government employee was entitled under the Civil Services Rules relating to pension and provident fund. Similar principle of law was laid down in **Vijay L Mehrotra's, Maha Singh Sinhar 's and Harban's Singh's** cases (supra). There is, no dispute, with the principle of law, laid down, in the aforesaid authorities. However, the facts of the aforesaid authorities, are distinguishable, from the facts of the present case. In the aforesaid cases, the delay had been caused by the authorities concerned, in making the payment of retiral benefits, to the petitioners. After the receipt of pensionary benefits, which were paid to him, after a long delay, they filed Writ Petitions, claiming interest, for delayed payments. In those circumstances, it was held that they were entitled to the same. In the instant case, hurdle in the grant of relief, is created by the order dated 17.5.2004 passed in C.W.P. No. 14053 of 2002, whereby, a Division Bench of this Court did not specifically grant the relief of interest, and thus, deemingly refused the same. When the earlier writ petition, was filed by the petitioner, in the year 2002, he had already retired, from service. It was, under these circumstances, that in the earlier writ petition, he sought numerous reliefs, i.e. regularization of his service from 1.4.1984, payment of retiral benefits, and interest thereon at the rate of 24% per annum. Under these circumstances, it could not be said that by that time, the cause of action, for the relief claimed by the petitioner, in that writ petition, had not

arisen to him. Since, the relief of interest was not granted to the petitioner, in the earlier writ petition, he cannot claim the same by filing the instant writ petition, as his claim, in this regard, is barred by the principle of res judicata. The facts of the aforementioned, authorities, being distinguishable, no help can be drawn by the learned Counsel for the petitioner, therefrom. The submission of the learned Counsel for the petitioner, being, without merit, must fail, and the same stands rejected.

8. No other point, has been urged, by the learned Counsel for the petitioner.

9. For the reasons recorded hereinbefore, the petition must fail, and the same is dismissed with no order as to costs.

December 20, 2007 **(SHAM SUNDER)**
archana **JUDGE**